

SECOND REGULAR SESSION

SENATE BILL NO. 910

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time January 19, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3367S.03I

AN ACT

To repeal sections 148.376, 383.015, 383.020, and 383.035, RSMo, and to enact in lieu thereof five new sections relating to malpractice insurance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 148.376, 383.015, 383.020, and 383.035, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 148.376, 383.015, 383.020, 383.035, 383.036, to read as follows:

148.376. 1. Every company operating under the provisions of sections
2 380.201 to 380.591, RSMo, **and every association operating under the**
3 **provisions of sections 383.010 to 383.040, RSMo**, shall quarterly pay a tax
4 upon the direct premiums or assessments received during the calendar year,
5 whether in cash or notes, on account of insurance business done in this state at
6 a rate of one percent per annum for the amount of direct premiums or
7 assessments received in excess of one million dollars. Direct premiums or
8 assessments received by such companies in excess of five million dollars shall be
9 taxed at the rate of two percent per annum. This taxation plan shall be in lieu
10 of all other taxes except taxes on real and tangible personal property, taxes on
11 franchises and license taxes, and those insurance companies shall be credited
12 with canceled or returned premiums, actually paid during the year in this state.

13 2. The taxes imposed by the provisions of this section shall be payable on
14 an estimated quarterly basis in the same manner that domestic insurance
15 companies pay tax under the provisions of this chapter, and shall be subject to
16 the same provisions concerning delinquency. Calendar year [1985] **2007** will be
17 the first year that [companies] **associations** operating under sections [380.201
18 to 380.591] **383.010 to 383.040**, RSMo, are required to pay tax under this section

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 [and sections 380.011 to 380.611, RSMo]. The estimated quarterly tax payments
20 for [1985] **2007 for associations operating under sections 383.010 to**
21 **383.040, RSMo**, will be based on the amount of tax that the company would have
22 paid based on their [1984] **2006** premiums or assessments. The tax collected
23 under the provisions of this section shall be distributed and apportioned in the
24 same manner as provided in section 148.380.

383.015. 1. Any such group of persons desiring to provide malpractice
2 insurance or indemnification for its members shall pay a license fee of one
3 hundred dollars and shall file articles of association, **along with a plan of**
4 **operation or a feasibility study**, with the director of insurance. The articles
5 shall be filed in accordance with the provisions of sections 375.201 to 375.236,
6 RSMo, and shall also include the names of persons initially associated, the
7 method by which other persons may be admitted to the association as members,
8 the purposes for which organized, the amount of the initial assessment which has
9 been paid into the association, the method of assessment thereafter, and the
10 maximum amount of any assessment which the association may make against any
11 member. The articles of association shall provide for bylaws and for the
12 amendment of the articles of association and bylaws.

13 2. Each association shall designate and maintain a registered agent
14 within this state, and service upon the agent shall be service upon the association
15 and each of its members.

16 3. The articles of association shall be accompanied by a copy of the initial
17 bylaws of the association. The bylaws shall provide for a governing body for the
18 association, a manner of election thereof, the manner in which assessments will
19 be made, the specific kinds of insurance or indemnification which will be offered,
20 the classes of membership which will be offered, and may provide that
21 assessments of various amounts for particular classes of membership may be
22 made. All assessments shall be uniform within classes. The bylaws may provide
23 for the transfer of risks to other insurance companies or for reinsurance.

24 4. **The plan of operation or feasibility study shall consist of an**
25 **analysis that presents the expected activities and results of the**
26 **association, including, at a minimum:**

27 (1) **The coverages, deductibles, coverage limits, rates, and rating**
28 **classification systems for the insurance the association intends to offer;**

29 (2) **Historical and expected loss experience of the proposed**
30 **members and Missouri experience of similar exposures to the extent**

31 **that this experience is reasonably available;**

32 **(3) Pro forma financial statements and projections;**

33 **(4) Appropriate opinions by a qualified, independent casualty**
34 **actuary, including a determination of minimum premium or**
35 **participation levels required to commence operations and to prevent**
36 **a hazardous financial condition;**

37 **(5) Identification of management, underwriting and claims**
38 **procedures, marketing methods, managerial oversight methods,**
39 **investment policies, and reinsurance agreements; and**

40 **(6) Such other matters as may be prescribed by the director of**
41 **insurance.**

383.020. 1. The director of insurance shall, within thirty days after any
2 such articles of association are filed with him, determine if the proposed
3 association meets the requirements of sections 383.010 to 383.040, and if it does,
4 shall issue a license to the association authorizing it to do business for a one-year
5 period.

6 **2. The director shall not issue or renew a license to any such**
7 **association unless it:**

8 **(1) Has and maintains a policyholders' surplus of at least one**
9 **hundred thousand dollars; and**

10 **(2) Has transferred to and deposited with the director for the**
11 **security of its policyholders and creditors, cash or bonds or treasury**
12 **notes issued or guaranteed by the United States, or bonds of the state**
13 **of Missouri, any school district of this state, or any political subdivision**
14 **of this state, to be received at a rate not above their par value nor**
15 **above their current market value, in the amount of one hundred**
16 **thousand dollars.**

383.035. 1. Any association licensed pursuant to the provisions of sections
2 383.010 to 383.040 shall be subject to the provisions of the following provisions
3 of the revised statutes of Missouri:

4 **(1) Sections 374.010, 374.040, 374.046, 374.110, 374.115, 374.122, 374.170,**
5 **374.210, 374.215, 374.216, 374.230, 374.240, 374.250 and 374.280, RSMo, relating**
6 **to the general authority of the director of the department of insurance;**

7 **(2) Sections 375.022, 375.031, 375.033, 375.035, 375.037 and 375.039,**
8 **RSMo, relating to dealings with licensed agents and brokers;**

9 **(3) Sections 375.041 and 379.105, RSMo, relating to annual statements;**

10 (4) Section 375.163, RSMo, relating to the competence of managing
11 officers;

12 (5) Section 375.246, RSMo, relating to reinsurance requirements, except
13 that no association shall be required to maintain reinsurance, and for insurance
14 issued to members who joined the association on or before January 1, 1993, an
15 association shall be allowed credit, as an asset or as a deduction from liability,
16 for reinsurance which is payable to the ceding association's insured by the
17 assuming insurer on the basis of the liability of the ceding association under
18 contracts reinsured without diminution because of the insolvency of the ceding
19 association;

20 (6) Section 375.390, RSMo, relating to the use of funds by officers for
21 private gain;

22 (7) Section 375.445, RSMo, relating to insurers operating fraudulently;

23 (8) Section 379.080, RSMo, relating to permissible investments, except
24 that limitations in such section shall apply only to assets equal to such positive
25 surplus as is actually maintained by the association;

26 (9) Section 379.102, RSMo, relating to the maintenance of unearned
27 premium and loss reserves as liabilities, except that any such loss reserves may
28 be discounted in accordance with reasonable actuarial assumptions.

29 2. Any association which was licensed pursuant to the provisions of
30 sections 383.010 to 383.040 on or before January 1, 1992, shall be allowed until
31 December 31, 1995, to comply with the provisions of this section as they relate to
32 investments, reserves and reinsurance.

33 3. Any association licensed pursuant to the provisions of sections 383.010
34 to 383.040 shall file with its annual statement a certification by a fellow or an
35 associate of the Casualty Actuarial Society. Such certification shall conform to
36 the National Association of Insurance Commissioners annual statement
37 instructions unless otherwise provided by the director of the department of
38 insurance.

39 4. The director of the department of insurance shall have authority in
40 accordance with section 374.045, RSMo, to make all reasonable rules and
41 regulations to accomplish the purpose of sections 383.010 to 383.040, including
42 the extent to which insurance provided by an association may be extended to
43 provide payment to a covered person resulting from a specific illness possessed
44 by such covered person[; except that no rule or regulation may place limitations
45 or restrictions on the amount of premium an association may write or on the

46 amount of insurance or limit of liability an association may provide].

47 5. Other than as provided in this section, no other insurance law of the
48 state of Missouri shall apply to an association licensed pursuant to the provisions
49 of this chapter, unless such law shall expressly state it is applicable to such
50 associations.

51 6. If, [after August 28, 1992, and] after its [second] **first** full calendar
52 year of operation, any association licensed under the provisions of sections
53 383.010 to 383.040 shall [file an annual statement which shows] **possess** a
54 surplus as regards policyholders of less than [zero] **one hundred thousand**
55 dollars, [or if the director of the department of insurance has other conclusive and
56 credible evidence more recent than the last annual statement indicating the
57 surplus as regards policyholders of an association is less than zero dollars,] the
58 director of the department of insurance [may] **shall** order such association to
59 submit, within [ninety] **forty-five** days following such order, a [voluntary] plan
60 under which the association will restore its surplus as regards policyholders to
61 at least [zero] **one hundred thousand** dollars. The director of the department
62 of insurance may monitor the performance of the association's plan and may order
63 modifications thereto, including assessments or rate or premium increases, if the
64 association fails to meet any targets proposed in such plan for [three] **two**
65 consecutive quarters.

66 7. If the director of the department of insurance issues an order in
67 accordance with subsection 6 of this section, the association may, in accordance
68 with chapter 536, RSMo, file a petition for review of such order. Any association
69 subject to an order issued in accordance with subsection 6 of this section shall be
70 allowed a period of [three] **two** years, or such longer period as the director may
71 allow, to accomplish its plan to restore its surplus as regards policyholders to at
72 least [zero] **one hundred thousand** dollars. If at the end of the authorized
73 period of time the association has failed to restore its surplus to at least [zero]
74 **one hundred thousand** dollars, or if the director of the department of
75 insurance has ordered modifications of the [voluntary] plan and the association's
76 surplus has failed to increase within [three] **two** consecutive quarters after such
77 modification, the director of the department of insurance may allow an additional
78 time for the implementation of the voluntary plan or may exercise his powers to
79 take charge of the association as he would a mutual casualty company pursuant
80 to sections 375.1150 to 375.1246, RSMo. Sections 375.1150 to 375.1246, RSMo,
81 shall apply to associations licensed pursuant to sections 383.010 to 383.040 only

82 after the conditions set forth in this section are met. When the surplus as
83 regards policyholders of an association subject to subsection 6 of this section has
84 been restored to at least [zero] **one hundred thousand** dollars, the authority
85 and jurisdiction of the director of the department of insurance under subsections
86 6 and 7 of this section shall terminate, but this subsection may again thereafter
87 apply to such association if the conditions set forth in subsection 6 of this section
88 for its application are again satisfied.

89 8. Any association licensed pursuant to the provisions of sections 383.010
90 to 383.040 shall place on file with the director of the department of insurance,
91 except as to excess liability risks which by general custom are not written
92 according to manual rates or rating plans, a copy of every manual of
93 classifications, rules, underwriting rules and rates, every rating plan and every
94 modification of the foregoing which it uses. Filing with the director of the
95 department of insurance within ten days after such manuals, rating plans or
96 modifications thereof are effective shall be sufficient compliance with this
97 subsection. Any rates, rating plans, rules, classifications or systems in effect or
98 in use by an association on August 28, 1992, may continue to be used by the
99 association. Upon written application of a member of an association, stating his
100 reasons therefor, filed with the association, a rate in excess of that provided by
101 a filing otherwise applicable may be used by the association for that member.

383.036. 1. No association first licensed under the provisions of
2 **sections 383.010 to 383.040 after August 28, 2006, may issue or renew**
3 **any insurance unless it maintains a ratio of its premiums written**
4 **during the most recent twelve consecutive months, less written**
5 **premiums ceded under any reinsurance agreement qualifying for credit**
6 **under section 375.246, RSMo, to its surplus as regards policyholders as**
7 **of the year ending December thirty-first of the immediately preceding**
8 **year, of no more than:**

9 (1) **Six to one from the date it commences operation until the end**
10 **of its second full calendar year of operation;**

11 (2) **Five to one during its third full calendar year of operation;**

12 (3) **Four to one during its fourth full calendar year of operation;**

13 **and**

14 (4) **Three to one at all times after its fourth full calendar year of**
15 **operation;**

16 2. **No association licensed under the provisions of sections**

17 383.010 to 383.040 on or before August 28, 2006, may issue or renew any
18 insurance unless it maintains a ratio of its premiums written during
19 the most recent twelve consecutive months, less written premiums
20 ceded under any reinsurance agreement qualifying for credit under
21 section 375.246, to its surplus as regards policyholders of no more than:

- 22 (1) Six to one from August 28, 2006, until December 31, 2007;
23 (2) Five to one after December 31, 2007, and until December 31,
24 2008;
25 (3) Four to one after December 31, 2008, and until December 31,
26 2009; and
27 (4) Three to one after December 31, 2009.

28 3. If any association is in violation of the applicable provisions
29 of subsections 1 or 2 of this section as of the end of any calendar year,
30 the director of the department of insurance shall order such
31 association to submit, within forty-five days following such order, a
32 plan under which the association will bring its ratio into compliance
33 with the applicable provisions of subsections 1 or 2 of this section by
34 the end of the calendar year immediately following the calendar year
35 in which the association was first in violation.

36 4. Any association that has violated the applicable provisions of
37 subsections 1 or 2 of this section as of the end of two or more
38 consecutive calendar years shall be deemed in such condition that the
39 further transaction of business would be hazardous financially to its
40 policyholders, creditors, or the public, and the director of insurance
41 may exercise his powers to take charge of the association as he would
42 a mutual casualty company under sections 375.1150 to 375.1246,
43 RSMo. Sections 375.1150 to 375.1246, RSMo, shall apply to associations
44 licensed under sections 383.010 to 383.040 only after the conditions set
45 forth in this section are met.

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